applicable to transactions occurring after its enactment. Such statutes, which are common in many jurisdictions, practically amount to re-enactments of the previous law in amended terms, and are given effect accordingly. It is true that a statute may be objectionable in form which purports to be capable of retrospective application when such an application would be unconstitutional. It by no means follows, however, that it should be held altogether void. Judge Cooley, in a passage subsequent to that quoted by the majority of the court in support of their opinion, makes an important qualification of his objections to declaratory statutes: "But in any case," he says, "the substance of the legislative action should be regarded rather than the form; and if it appears to be the intention to establish by the declaratory statute a rule of conduct for the future, the courts should accept and act upon it, without too nicely inquiring whether the mode by which the new rule is established is or is not the best, most decorous, and suitable that could have been adopted." Cooley on Constitutional Limitations, 6th ed., p. 113.

The objections to declaratory statutes are recognized in the Pennsylvania Constitution of 1874, the provisions of which as to the form in which all statutes shall be passed prevent any statute similar in form to the one in dispute from being now enacted. But that, of course, does not concern an act of 1867. The courts may dislike the form of a statute the provisions of which appear to apply to past as well as future cases, when it would be an unconstitutional usurpation of judicial authority to direct the court to apply them retrospectively. But it would seem that the fairest manner of regarding the statute would be to take it as intended only to apply prospectively. By insisting on their objections to the form of the statute, the court would almost seem, in their zeal against statutes that might be retrospectively applied, to be in effect retrospectively applying the provisions of the Constitution of 1874.

Liquor-Selling by Clubs. — Is a social club, which dispenses liquor to its members in the ordinary mode, amenable to the liquor law? The conflict of authority on this point is doubtless due partly to variations in the wording of the different statutes. But even where the statutes are substantially the same, courts have reached the most divergent results. The form in which the question ordinarily arises is this: Does the dealing out of liquor by the steward of a club in response to the order of a member constitute a sale within the meaning of a statute which provides that no one shall sell liquor at retail, to be drunk on the premises, without a license? The New York Court of Appeals has just answered this question in the negative. In *People* v. *Adelphi Club*, 43 N. E. Rep. 410, it was held that the dispensing of liquors by a social club, which has a limited and select membership, and was organized for a legitimate purpose, to which the furnishing of liquors to its members is merely incidental, is not a sale within the meaning of the law. The weight of authority is in accord with this view. *Commonwealth* v. *Pomphret*, 137 Mass. 564; *Seim* v. *State*, 55 Md. 566; *State* v. *St. Louis Club*, 28 S. W. Rep. 604 (Mo.).

Strictly speaking, it would seem that the transaction amounts to a sale. It can hardly be called a mere division of property belonging to the members of the club in common. The title to the liquor is certainly in the club, and though it is transferred only to members and without expec-

tation of profit, it is difficult to discover any element of a sale that is lacking. If the club is a corporation, this is true beyond the possibility of a doubt. Consequently, many courts have held clubs liable without going further. *State* v. *Lockyear*, 95 N. C. 633; *State* v. *Essex Club*, 53 N. J. Law, 99; *People* v. *Bradley*, 11 N. Y. Supp. 594.

The question, however, is not simply whether there is a sale, but whether there is a sale of the sort the legislature intended to forbid. Much can doubtless be said on both sides of this question. On the one hand, it is urged that as the sale of liquor by clubs is of so different a nature from the ordinary bar-room sale, a statute which is manifestly aimed directly at the latter should not be taken to include the former without express words. Black on Intoxicating Liquors, § 142. On the other hand, it may be contended, perhaps even more forcibly, that, as the language of the statute fits the case so closely, and liquor-selling by clubs is so notorious, the legislature would have expressly reserved it from the operation of the statute if the intention had not been to include it.

In jurisdictions where the former view is adopted, the club, in order to be protected, must of course be a *bona fide* organization with other objects than the mere dispensing of liquor. Courts which take the latter view have often failed to notice this distinction. For example, in *State* v. *Neis*, 13 S. E. Rep. 225 (N. C.), the court said, "If the gentlemen composing the Cosmopolitan Club of Asheville can be exempted from the liquor tax by the simple device of treating themselves as unorganized tenants in common of a stock of spirituous liquors, and employing an agent to furnish drinks to any members of their club and their friends, by selling at cost, the same can be done by any five hundred or five thousand patrons of a bar-room." This conclusion by no means follows from the premises. If the club is a mere device to avoid the liquor law, it would nowhere be protected. See *Rickart* v. *People*, 79 Ill. 85.

THE LIABILITY OF A PUBLIC TREASURER. — There is considerable difference of opinion in the cases as to the extent of the liability of a public treasurer. Does the bond ordinarily required of such an official make his liability greater than that imposed by the common law on all fiduciaries? Two recent cases are of interest, as the courts arrive at opposite conclusions on this question after reviewing the authorities. In *State* v. *Copeland*, 34 S. W. Rep. 427 (Tenn.), on a bond with the usual conditions for faithful performance of duty and for paying over the public money as required, etc., it was held that the official was not liable for a loss not due to any negligence on his part. There is nothing in such a bond to increase the common law liability. In reaching this conclusion the court is strongly influenced by considerations of public policy, especially by the fear that the better class of men will not accept office when doing so involves the assumption of so great a liability. In *Fairchild* v. *Hedges*, 44 Pac. Rep. 125, the Supreme Court of Washington (one judge dissenting) held that a county treasurer is liable on the undertaking in his bond for money deposited in a bank that fails, though due care was exercised in its selection. While the court thinks this view is in accord with sound public policy, it rests the decision on the terms of the bond.

The two main points on which a difference of opinion is to be found in the authorities are illustrated by these cases. Whatever opinion one may have on the public policy involved in this question, a discussion of it is